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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Children and juveniles in detention

Report of the Secretary-General pursuant to Commission on Human rights resolution 1995/41

Addendum

CONTENTS

	Page
Introduction	2
INFORMATION RECEIVED FROM GOVERNMENTS	
Colombia	3
Cuba	12
Mexico	13
Norway	23
Spain	24
Tunisia	25

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Introduction

The present note contains additional replies received from Governments after the publication of the report by the Secretary-General on the subject (E/CN.4/1996/31).

As at 23 January 1996, such replies had been received from the Governments of Colombia, Cuba, Denmark, Mexico, Norway, Spain and Tunisia. The information received from the Government of Denmark is that already contained in the initial report of Denmark to the Committee on the Rights of the Child (CRC/C/8/Add.8, chap. IX. B).

Colombia

[10 and 23 November 1995]
[Original: Spanish]

1. The training programmes on human rights and justice for children and juveniles which the Colombian Government is carrying out through the Division for the Rights of Children, Women and Senior Citizens are the following:

(i) Raising civil servants' awareness of the rights of children and juveniles. The overall objective is to foster attitudes, commitment, information and working procedures in the public sector, which will ensure not only the promotion but also the actual exercise of the rights of children and juveniles, both within the family and in programme development and the provision of community services;

(ii) System for monitoring and follow-up of children's rights. The purpose of this project is to devise a system for obtaining timely, adequate and reliable information at local, regional and national levels and bringing it to the attention of the public;

(iii) On the question of the detention of minors, the Division has prepared a document on detention and minors in Colombia, which is attached hereto; 1/

(iv) Finally, in accordance with article 282 of the National Constitution and article 9 of Act No. 24 of 1992, under which the People's Advocate is empowered to make observations and recommendations to the authorities in the event of a threat to or violation of human rights, the Advocate's Office presented to the Ministry of Justice a document, a photocopy of which is attached, 1/ containing a number of observations on the juvenile justice system, which are currently being reviewed by the Ministry.

2. In accordance with article 282 of the Constitution and article 9 of Act No. 24 of 1992 authorizing the People's Advocate to make observations and recommendations to the authorities in the event of a threat to or violation of human rights, we have set out below a number of observations regarding matters concerning the juvenile justice system which are of increasing concern to the People's Advocate.

3. In the light of the recent declaration of internal unrest and announcement by the President of the Republic that minors between 14 and 18 years of age would be subject to the same treatment and penalties as adult offenders "as they are deemed to be sufficiently mature to commit crimes" and their subsequent "imprisonment", the following should be noted:

(a) Act No. 137 of 1994 governing states of emergency provides in article 44 that "during a state of internal unrest, legislative decrees may

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1/ This document may be consulted in the secretariat's files.

define criminal behaviour, increase or reduce penalties, amend provisions of criminal and police procedure, and authorize changes of venue for trials". The Constitution clearly establishes the limitations to which the Government is subject during states of emergency and the law lays down the areas of criminal law which may be subject to amendment under these special powers, which unquestionably allow for changes in the penal system. The law does not provide, however, for changes to the provisions governing minors, whereby the latter are not considered subjects of criminal law. This power could not be used to amend the legal status of minors, particularly if such changes were inconsistent with the special treatment accorded to them under the 1991 Constitution (arts. 44 and 45) and international treaties and instruments, such as:

Convention on the Rights of the Child;

International Covenant on Civil and Political Rights;

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules");

United Nations Rules for the Protection of Juveniles Deprived of their Liberty;

United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

(b) One of the weaknesses in present legislation on juvenile offenders is that measures are applied on the basis of the characteristics of the subject rather than of the act. Colombian criminal law is based on the principle of the act or of material objectivity. Consequently, only acts or omissions of individuals are punishable. Conversely, the government proposal is based on the revalued criminal-law principle whereby the danger represented by the perpetrator is taken into account in determining the penalty: way of life, habits, temperament, attitudes, emotional stability. The individual is punished not for what he has done but for what he is.

(c) One of the main reasons invoked by the Government in justifying the emergency measures is "the use of minors and persons who cannot be held legally responsible to commit or participate in criminal acts". As stated in the preambles to the decrees issued, the point at issue is the "use" of minors. The Government implicitly recognizes them as not being legally responsible and as "objects" or mere tools used to carry out the illicit act, so that it is contradictory and disproportionate firstly to include them within the scope of criminal law, and secondly to set out to treat them as adult offenders. Moreover, although criminals have resorted to the use of minors, there are at present no figures giving a clear picture of the extent of this phenomenon. There are partial studies such as the one conducted by the Office of the People's Advocate on detention and minors (copy attached 1/) which looks at all the trials in which minors have been deprived of their freedom in the cities of Cali and Bogotá and establishes, among other things, the percentage of unlawful acts in which minors were involved or used by an adult: 7.86 per cent in Cali and 8.66 per cent in Bogotá;

(d) If emergency decrees are to have any logical basis, the measures must be directly related to the alleged causes of the disturbance of public order. In this case, as mentioned earlier, we do not see how the problem of juvenile delinquency can be sufficient cause for the crisis proclaimed by the Government. As experience has shown, the announced measures regarding minors make no effective contribution to remedying the situation.

(e) This phenomenon cannot be dealt with by measures aimed exclusively at the weakest link. It requires far-reaching criminal policy measures directed at the following problem areas, among others:

Lack of a policy for the prevention of juvenile delinquency;

Lack of any policy for the rehabilitation and care of, and alternative measures for, the delinquent population;

Inefficient administration of services and programme development;

Lack of coordination among competent authorities and local bodies with a view to meeting the needs of the delinquent population;

Poor training of family advocates (Defensores de Familia) in the application of regulations in trials of minors involved in unlawful acts.

(f) In the matter of "imprisonment of minors", the Government is guilty of yet another contradiction in that, while recognizing the crisis within the prison system, it nevertheless presents imprisonment as an answer to the problem of juvenile delinquency. It also disregards the recent failure of the previous Penal Code, under which minors aged 16 to 18 were liable to imprisonment. The courts have sentenced such minors to imprisonment in a number of cases, with no regard for the fact that the harsh and inhuman conditions prevailing in prisons do not constitute an alternative for adults, still less for children. The only result of this measure, apart from shifting the crisis from one system to another, would be to place minors in a situation in which they would be at risk and their rights open to violation.

(g) In Decree No. 967 of 9 June 1995, the President of the Republic established the National Government Advisory Commission to review and reform Decree No. 2737 of 1989 - the Minors' Code; its remit was to "review and propose amendments to the Minors' Code so as to bring it into line with international legislation and with the provisions of the Constitution of 1991". Immediately thereafter, measures relating to juvenile offenders, the main subject of the reform, were announced, thus limiting the ability of the Commission to devise effective and comprehensive guarantees for their full protection.

(h) The People's Advocate is well aware of the general climate of violence prevailing throughout the country, a situation to which juvenile offenders contribute to some extent. However, they must be treated in accordance with their age and legal status. Under the international instruments, imprisonment should be imposed only as a last resort and for as short a time as possible.

4. There must be a transition from present legislation to a system of juvenile criminal responsibility which guarantees their right not only to justice, but also to prevention and protection when the institutions fail them. Under the Convention on the Rights of the Child and the guarantees afforded by the 1991 Constitution, there is an irrefutable obligation to take all measures to ensure the protection and full development of minors, in accordance with their rights.

5. The Colombian Government is conducting programmes in this area through the Colombian Family Welfare Institute (ICBF), with a view to standardizing criteria for the proper interpretation of the rules and procedures relating to family and juvenile law. These programmes are aimed at family advocates, ICBF social workers, juvenile and family magistrates, and personnel providing specialized care for minors aged 12 to 18 who have committed or participated in criminal offences.

6. In Colombia, juvenile and family magistrates and justices of the peace, as the only officials empowered to administer justice to minors aged between 12 and 18 who have committed or participated in criminal offences, most often impose non-custodial sentences.

7. The Minors' Code, Decree No. 2737 of 1989, came into force on 1 March 1990, which is why the table below covers the period 1990 to 1995 (first six months). As can be seen, measures such as warnings, non-custodial supervision, imposition of rules of conduct, etc. are more common than placement in an institution.

Measures taken by the courts

Measures	1990	1991	1992	1993	1994	1995
Warning	507	1 175	932	1 133	1 359	397
Non-custodial supervision	2 831	3 243	2 405	2 349	2 883	1 024
Rules of conduct	-	818	698	967	551	584
Detention in closed institution	2 481	1 216	1 272	1 172	5 711	456
Detention in semi-closed institution	-	1 176	1 397	1 098	1 543	429
Observation	3 164	733	916	1 456	1 120	390
Other measures	5 148	-	-	1 433	1 175	82
To be determined	2 503	6 976	5 819	4 853	4 022	1 531
No information available	2 005	2 050	2 079	-	-	1 977
Total a/	18 640	17 386	15 518	14 461	18 364	6 870

a/ Juvenile and family courts are the ICBF's main source of information on minors aged 12 to 18 who have committed a criminal offence.

Legislative aspects

8. Colombian legislation, through article 204 of the Minors' Code (Decree No. 2737 of 1989), establishes the measures applicable to minors aged 12 to 18 who have committed or participated in a criminal offence, as follows: "Once the offence has been fully established, the juvenile or family court may order one or more of the following measures, ensuring, as far as possible, that they are applied within the family circle or within the jurisdiction to which the minor belongs. They are essentially educational and protective in character:

Warning addressed to the minor and to the persons responsible for him or her;

Imposition of rules of conduct;

Non-custodial supervision;

Placement in an institution;

Any other measure that will contribute to the minor's rehabilitation.

9. Article 203 provides that, for the application of the measures, minors have the right to remain preferably within their family circle and that only when this is not appropriate or the personality of the minor so dictates shall he or she be placed in an institution. This right is reiterated in article 208 of the Minors' Code, which states: "Placement in an institution shall be ordered by the court when it is not advisable to apply any of the other measures referred to in article 204, because of the character of the minor and his family environment, the nature of the offence or the circumstances in which it was committed".

Programmes for the care of minors aged 12 to 18 who have committed or participated in a criminal offence

10. Under the Constitution and the Minors' Code, all sectors of society have an obligation to take an active role in respect of minors who have broken the law. This calls for the collective efforts of the local bodies and other institutions concerned with the protection of juveniles with behavioural problems in establishing a public rehabilitation service, with the coordination and advisory services of the ICBF.

11. Consequently, in accordance with the allocation of functions among State bodies, programmes for the care of minors who have committed or participated in a criminal offence have been drawn up by the Colombian Family Welfare Institute, as the body responsible for the national family welfare system, on the basis of the Minors' Code, the Colombian Constitution, the Convention on the Rights of the Child (Act No. 12 of 1991) and the United Nations Standard Minimum Rules for the Administration of Juvenile justice ("Beijing Rules").

12. The rehabilitation and social reintegration of such minors calls for a care process involving the gradual implementation of various measures aimed fundamentally at "the full development of the minor and his or her normal

integration in the family and the community". This process must be based on profound respect for and understanding of the human being, with a view to achieving his full development, and is governed by two factors: the legal and the educational.

13. The Minors' Code lays down the structure and functions of specialized rehabilitation and reintegration services providing care for juvenile offenders aged between 12 and 18. These services must be responsive and consistent with the stages of the process to be completed by the minor and with the measures ordered by the courts. Consequently, specialized services are provided in two forms: open-environment programmes and institutional-environment programmes.

14. Institutional-environment programmes: this type of care includes all measures taken by public or private institutions belonging to the national family welfare system for the care and full development of minors temporarily separated from their family environment, to facilitate their subsequent reintegration into the family and society under favourable conditions. Depending on the stages envisaged in the care process and the institutional placement measures ordered by the juvenile or family court, institutional-environment services comprise reception centres, observation centres and closed, semi-closed and open rehabilitation centres.

15. Open-environment programmes: this type of care includes all community measures designed to provide for the care and full development of the minor and to promote and strengthen his family and social ties. This involves the participation of the minor, the family and the community to which he belongs.

16. This arrangement is more usual than the institutional arrangement as it covers the great majority of measures ordered by the juvenile or family courts, such as non-custodial supervision, the imposition of rules of conduct, warning addressed to the minor and to the persons responsible for him or her and others designed to promote his rehabilitation. Article 208 of the Minors' Code also stipulates that the above-mentioned measures shall not be applied only when the character of the minor, the nature of the offence and the circumstances in which it was committed so dictate.

17. Open-environment care derives from the following fundamental rights of minors, as embodied in the Colombian Constitution, the Convention on the Rights of the Child and the Minors' Code:

> "The fundamental rights of the child are: the right to life, physical integrity, health and social security, balanced nutrition, a name and nationality; the right to have a family and not be separated from it; and the right to care, love, education, culture, recreation and freedom of expression. They shall be protected against any form of abandonment, physical or mental violence, abduction, sale, sexual abuse, labour or economic exploitation and hazardous employment. They shall also enjoy the other rights embodied in the Constitution and laws and in the international treaties ratified by Colombia.
>
> "The family, society and the State have an obligation to assist and protect the child in order to guarantee his complete and harmonious

development and the full exercise of his rights ... The rights of children shall prevail over the rights of others" (Constitution, art. 44).

Right to protection:

"Every minor shall have the right to the protection, care and assistance necessary for proper physical, mental, moral and social development; these rights shall be recognized from the time of conception.

"Where parents or other persons legally obliged to provide such care are unable to do so, it shall be provided by the State, on a subsidiary basis" (Minors' Code, art. 3).

Right to a family:

"Every minor shall have the right to grow up within a family ... A minor may be separated from his family only in special circumstances as defined by law and for the sole purpose of protecting him.

"It shall be the duty of parents to ensure that their children receive the care necessary for their proper physical, intellectual, moral and social development" (Minors' Code, art. 6).

18. Furthermore, the open-environment care arrangement derives from the duty of the State, through the ICBF, to strengthen family ties, ensure and support the fulfilment of the duties and obligations of family members, safeguard their rights and provide protection to minors, as laid down in the above-mentioned provisions.

Conceptual framework

19. Equality of opportunity is a necessary condition of democracy; it involves not only freedom from discrimination but also encouragement and assistance to those who are disadvantaged or relegated to inferior status. Juvenile delinquency is a clear reflection of marginalization and a phenomenon which, to a large extent, results from unsatisfied needs and unsolved problems.

20. In Colombia, the Government's commitment to promoting the conditions to ensure that equality is a practical reality for all requires its institutions to work together with a philosophy based on recognition of a subject who is worthy and autonomous in the development of his personality. On this basis, it is vital to establish the machinery to guarantee comprehensive care for young people in difficulty, and to seek their active participation in the process and the support of the family and community.

21. This type of care is provided to minors aged 12 to 18 who have committed criminal offences and who have been given a warning by juvenile or family courts or have been placed under non-custodial supervision, with or without the imposition of rules of conduct.

22. In issuing a warning, the juvenile court draws the attention of the minor, his parents or persons responsible for him to the offence committed and urges him to abide by and respect the normal values of family and community life in future. With this warning, the minor is delivered into the care of his parents, if the home environment guarantees the full development of the minor and the circumstances and nature of the offence do not dictate otherwise (Minors' Code, art. 205).

23. Under the Minors' Code, the rules of conduct involve imposing on the minor specific obligations and restrictions ordered by the court and can be applied in conjunction with a warning or non-custodial supervision.

24. Non-custodial supervision involves handing over the minor to his parents or legal representatives, on condition that they accept the programmes, guidance and supervision provided by the court or the ICBF through officials designated for the purpose, and undertake to report periodically to the court. Non-custodial supervision is ordered by juvenile or family courts for juveniles whose personal, family and social circumstances are such as to enable them to receive care without being removed from their social or family environment, and is an essentially educational and protective measure (Minors' Code, arts. 204 and 207).

Management of the juvenile open-environment care programme

25. For the purposes of the implementation of this programme, the court and the ICBF are required to conduct a joint qualitative and quantitative analysis of all juveniles subject to these measures. On the basis of this analysis and depending on the resources available, the programme is drawn up and the objectives, type of service and degrees of responsibility of each of the individuals and bodies involved are clearly defined.

26. The location of the various ICBF units and the jurisdiction of the courts, the time available to minors and their families and the accessibility of the programme are essential determining factors in the assignment of cases and the appropriate procedures. Communication with the courts must be maintained at all times, given that it is the juvenile and family courts that impose the measures laid down in the Minors' Code for offenders between the ages of 12 and 18.

27. The ICBF has campaigned at all levels for the open-environment care of juvenile offenders as a way of maintaining them in their family circle when circumstances permit, and has promoted these programmes in all departments of Colombia, with the participation of the various government bodies and NGOs at local level, since this type of care takes pride of place over the placement of minors in an institution.

Training

28. Another policy element is the continuous training of all those involved in the care of juvenile offenders: juvenile or family court magistrates, ICBF officials, both family advocates and social workers, specialized service personnel, responsible bodies, juveniles, families and the community.

29. In order to achieve satisfactory results in the best interests of minors, the integration of juvenile and family courts and family advocates is essential in facilitating the standardization of criteria for the proper interpretation of legislation and procedures relating to family and juvenile law.

30. This continuous training will be based on technical and administrative guidelines developed by the ICBF - the national centre - for action to promote the protection and rehabilitation of minors. These guidelines have accordingly been drawn up and distributed and training provided to all persons responsible for juvenile care, with a view to strengthening action in this area. These guidelines include:

General guidelines for the care of minors aged 12 to 18 who have committed or participated in a criminal offence;

Educational programme for the full rehabilitation of juvenile offenders, drawn up in cooperation with the representatives of the various bodies concerned with juvenile care;

Guidelines on the pedagogical scope and follow-up of rules of conduct;

Guidelines for non-custodial supervision.

A videotape has also been made on the operation of open-environment rehabilitation services, based on experience with the non-custodial supervision programme in the city of Bucaramanga (Santander Department).

31. In 1993 and 1994, with the financial assistance of UNDCP, a series of consultative visits was made to ICBF regional offices, with the aim of strengthening inter-agency procedures and implementing and promoting open-environment programmes.

32. Seven macro-regional seminar/workshops on the implementation of the educational programme for the care of juvenile offenders were held throughout the country with the active participation of juvenile and family magistrates, family advocates, representatives of local bodies, the National Apprenticeship Service (SENA), institutions and other persons involved in juvenile care.

33. In addition, the Protection Department, through the Division for the Social and Legal Care of Children and the Family, held six macro-regional workshops for the training of juvenile and family magistrates and family advocates in areas of family and juvenile law and psycho-social questions.

34. Next November, the first national seminar/workshop in open-environment services is to be held, the primary aim being to bring together persons implementing these programmes throughout the country and provide them with an opportunity to share experiences, draw up an analysis of this type of care in Colombia and finalize regional action plans for the enhancement of open-environment services; the second national seminar/workshop for rehabilitation agencies will also be held in November with the basic aim of taking a closer look at some aspects of work with minors, such as therapy and family-children relations.

35. At the same time, priority is being given to preventive action to avoid the development of anti-social symptoms which might affect the conduct of juveniles and cause them to turn to crime.

36. The Government submitted to the National Council for Economic and Social Policy (CONPES), the supreme national planning body, for consideration and approval, the document "El Tempo de los Niños" (Santafé de Bogotá, D.C., 7 June 1995, document 2787 - Ministry of Health, ICBF, DNP, UDS-PAFI), which sets out "the policy for the care of children, aimed specifically at those living in poverty or particularly difficult circumstances, with a view to improving the quality of their lives and guaranteeing the full exercise of their rights to survival, protection, development and participation, in the context of the social leap forward and the international commitments entered into for the benefit of children".

37. Action aimed at children will be conducted on an inter-sectoral basis, involving State institutions and local bodies, non-governmental organizations and civil society, and will at the same time seek to strengthen the family and community structures of the most socially-disadvantaged population groups, with a view to preventing poverty from being passed on from one generation to the next.

38. The programmes and aims laid down in the CONPES document cover the question of the care of child and juvenile offenders, which gives special attention to open-environment programmes and envisages the possibility of the Youth Department, in coordination with the ICBF, promoting and providing technical and financial assistance to non-custodial supervision and rules-of-conduct programmes for juvenile offenders and, again in coordination with the ICBF, devising and launching an ambitious plan for the promotion of these measures as an alternative to placing minors in an institution and to preserve the family unit.

Cuba

[19 December 1995]
[Original: Spanish]

1. Cuban criminal law confers special protection on minors, not only by identifying a specific offence (corruption of minors) but also by establishing heavier penalties for other offences (offences against property, drug trafficking, sexual abuse, and so on) involving or directed against minors. In addition, 1978 saw the entry into force of the Children's and Juveniles' Code, a set of provisions and ethical principles for the full development and protection of children and juveniles; and in 1982, special legislation was adopted instituting the "System for the care of minors with behavioural disorders", which provides for the treatment of minors up to the age of 16 on the basis of a coherent, unified system of organizations and specialists (doctors, teachers, psychologists, sociologists, etc.) responsible for reaching, scientific and social solutions in cases of children and juveniles with behavioural difficulties and conflicts. This facilitates rapid and effective action. In 1986, the National Commission for Prevention and Social Welfare, consisting of State bodies and agencies and social organizations, was

established to draw up, implement and coordinate social prevention plans. The Commission is carrying out far-reaching practical programmes, most of which are aimed at children and juveniles.

2. The United Nations Guidelines for the Prevention of Juvenile Delinquency, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty are applied, are provided for in current legislation and are thus widely known.

3. Under Cuban criminal law, persons less than 16 years of age may not be charged with any offence. They cannot be held criminally responsible and therefore cannot be subjected to any charge, let alone a criminal sanction. From the age of 16 individuals can be tried although, depending on their age, they may receive special care with the aim of rehabilitating them, instilling respect for law and order, and training them for an occupation or trade.

4. The Penal Code stipulates that, in the case of persons over 16 and under 18 years of age, the minimum and maximum penalties may be reduced by up to one half and, in the case of persons between 18 and 20, by up to one third.

5. As a consequence of the legislation on minors with behavioural disorders, there is a large body of officials specializing in this field. Special treatment is provided by psychiatrists, psychologists, educators, etc., in addition to the care provided by the Office of the Public Prosecutor, the police and social workers belonging to the prevention and social welfare commissions. All these officials are properly trained for their duties and periodically undergo specialized training.

Mexico

[15 December 1995]
[Original: Spanish]

Legal framework

1. The provisions contained in the legislation in force guarantee full respect for the human rights of minors subject to proceedings by the bodies responsible for the administration and enforcement of justice. The Treatment of Juvenile Offenders Act, applicable throughout the Republic in federal matters and within the Federal District in non-federal matters, promulgated in 1991 and in force since 22 February 1992, contains the internationally-agreed principles and safeguards in this area.

2. This Act provides for decent, fair and humane treatment, in keeping with the Constitution, and is based in particular on the concepts and principles set forth in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules") and in the Riyadh Guidelines.

3. Reproduced below are the first three articles of the Act, which contain the underlying philosophy of this piece of legislation:

"Art. 1. The purpose of this Act is to govern the function of the State in protecting the rights of minors and rehabilitating those guilty of an offence under federal and Federal District criminal laws; it is applicable within the Federal District in non-federal matters and throughout the Republic in federal matters.

"Art. 2. This Act shall be so enforced as to guarantee full respect for the rights laid down in the Constitution of the United Mexican States and international treaties. The officials responsible shall be encouraged and monitored in their enforcement of these rights and shall always endeavour to apply the relevant legal and material measures properly, in order to prevent any violation and, if necessary, to restore to the minor the enjoyment and exercise of his or her rights. The foregoing is without prejudice to the application to anyone who infringes the criminal or administrative law of the penalties laid down therein.

"Art. 3. A minor charged with committing an offence shall receive fair and humane treatment; subjecting him or her to ill-treatment, detention incommunicado, psychological pressure or any other treatment that might be harmful to his or her dignity or physical or mental integrity is therefore prohibited."

4. The Act embodies the following principles:

Principle of legality:

Right to be assisted by a defence counsel and to be given the resources one requests for one's defence;

Right to be heard and to have one's case decided in court;

Right to file challenges;

Right to present evidence;

Right not to be compelled to testify against oneself and right to remain silent;

Right to be confronted with a person testifying against oneself;

Right to obtain release on bail with security where appropriate;

Right to be informed of the charge against oneself and the person or persons bringing them;

Right to be presumed innocent until proven guilty;

Obligation for the juvenile care authority to provide justification for its acts;

Principle of legal security:

Delimitation of minimum and maximum categories for determining the duration of treatment measures within and outside institutions;

Delimitation of the minimum (11) and maximum (under 18) ages for being subject to the juvenile justice system;

Establishment of the time-limits of 24 and 48 hours for defining the legal situation of minors subject to the jurisdiction of the bodies responsible for the administration and enforcement of justice respectively;

Institution of proceedings solely for the reason established in the initial decision;

Right to benefit from the minimum guarantees set forth in the Constitution;

Exclusive power to impose measures conferred on the subordinate bodies of the Council for Juvenile Offenders;

Delimitation of competence and powers;

Right not to be tried more than once for the same offence;

Right to obtain immediate release on bail with security for petty misdemeanours;

Principle of presumption of being a minor:

Right to be presumed a minor in case of doubt;

Principle of non-stigmatization:

Right not to be stigmatized socially because of the offence committed to which end the authorities and the media are expressly forbidden to reveal the identity of a juvenile offender.

5. Minors also enjoy other rights, such as the right to be visited by their relatives in the diagnostic and treatment centres, to receive and send correspondence, to engage in sporting, cultural and recreational activities, to obtain a percentage of the earnings from products they produce during their stay in the centres, to receive the benefits of treatment outside the institution, or weekend and holiday outings, or to be kept in the institution and allowed out on weekdays, to be given appropriate clothing and utensils for their personal hygiene, and to have access to primary, secondary or higher education without having the place where they studied appear on their respective diplomas (which further strengthens the principle of non-stigmatization).

6. Minors are provided with training in various workshops in such subjects as baking, computer operation, hairdressing, sewing, pastry-making, carving, painting, shorthand-typing, carpentry, printing and domestic science.

7. In order to safeguard the rights and guarantees of minors deprived of their liberty, an order was promulgated on 20 August 1993 containing standards for the operation of diagnostic centres and treatment centres for minors, the second preambular paragraph of which reads as follows:

> "... Considering that it is necessary to regulate the operation of diagnostic centres and treatment centres for minors, ensuring that they maintain the strictest respect for human rights and establishing them as effective humanitarian institutions providing minors with what they need in order to have the prospect of a creative, worthy and productive life when they rejoin their families and society. Thus the conventional notion of punishment as the only way to deal with offenders can give way to that of the fragile but hopeful social group.
>
> "Also considering that it is in the public interest to modernize the centres' operations so that they can respond to the complex problems of minors in one of the largest cities in the world; thus continual training and refresher training must be given to the technical and administrative staff responsible for returning the minors to society."

Promotion and protection of the rights of the child

8. The National Programme of Action for Children 1995-2000 contains a chapter on juvenile offenders which describes the current situation, objectives, goals, strategies and courses of action in this field and the body responsible for follow-up and evaluation. An indication of the scope of this Programme is the fact that a National Commission on Action for Children was set up in January 1995 to promote and stimulate its implementation, follow-up and evaluation; it is made up of the heads of the Ministry of Health, the Ministry of Public Education, the National System for the Integral Development of the Family and the National Water Commission, responsibility for general coordination lying with the Minister of Health. Reproduced below are the contents of the chapter on juvenile offenders within the National Programme of Action for Children 1995-2000.

Juvenile offenders

9. On the basis of the Treatment of Juvenile Offenders Act for the Federal District in non-federal matters and for the entire Republic in federal matters, published in the Diario oficial de la Federación on 24 December 1991 and in force since 22 February 1992, the Ministry of the Interior established the Council for Juvenile Offenders and the Directorate-General for Preventive Action and Treatment of Minors.

10. The purpose of the Act is to lay down regulations for the State system for the protection of juvenile rights, and for the social rehabilitation of those whose behaviour is classified as an offence under federal and Federal District criminal legislation; it is applicable in the Federal District in non-federal matters and in the Republic as a whole in federal matters.

11. The Council for Juvenile Offenders is a decentralized administrative body within the Ministry of the Interior; it is autonomous and is responsible for the implementation of the provisions for the treatment of juvenile offenders. It is empowered to investigate behaviour of young persons over 11 and under 18 years of age which is classified as an offence in criminal legislation; to that end, it initiates legal action and resolves the legal situation of minors, ordering and assessing any guidance, protection and treatment measures it deems necessary for their social rehabilitation.

12. For its part, the Directorate-General for Preventive Action and Treatment of Minors is empowered to conduct general and specific prevention activities, and also activities aimed at the social rehabilitation of juvenile offenders.

13. The administration of juvenile justice in the Federal District is in the hands of two institutions, namely:

(a) The Directorate-General for Preventive Action and Treatment of Minors (DGPTM) is the unit responsible for the administration of justice. Its purpose is to protect the rights and legitimate interests of the individuals affected by offences attributed to minors, through its commissioner, who is responsible by law for investigating violations of the criminal law committed by minors, and to take steps to verify the existence of the offences that a juvenile is suspected of having committed or participated in. It also intervenes to defend society's interests in proceedings begun against juveniles suspected of having committed an offence when they are placed at the disposal of the unit counsellors.

(b) The Council for Juvenile Offenders is the body empowered to enforce juvenile justice through action by the unit counsellors who, when the commissioner places at their disposal a minor who is suspected of having committed an offence, are required to take the necessary judicial steps to resolve the minor's legal situation within 48 hours by means of a duly substantiated initial decision, which will stipulate whether or not the juvenile is subject to procedure and, if he is, whether this will take the form of treatment in one of the DGPTM's diagnostic centres or non-resident treatment under the custody of his parents or legal representatives.

14. Once the initial decision stating that the minor is subject to procedure has been issued and the various parties notified, the investigation period begins; during this period the parties (defence counsel, commissioner) present evidence for the defence, and bio-psycho-social studies of the minor by DGPTM specialists are ordered. These are used by the interdisciplinary technical committee in preparing its report. When the counsellor receives this report and the parties' arguments, he declares the investigation closed and issues a final decision stating whether or not the existence of the offence attributed to the minor, has been verified and, if so, whether or not the minor's full participation in the commission of that offence has been verified. If the minor's responsibility for the acts attributed to him is confirmed, the final decision will indicate the type of measure or treatment applicable to the case.

15. In order to comply with the provisions of the law while the procedure is under way, the DGPTM has two diagnostic centres, one for males and one for

females, whose purpose is to ascertain the bio-psycho-social make-up of the minor suspected of having committed an offence by conducting the appropriate technical studies.

16. Residence in these centres is temporary, and minors are subject to a system of classification by age, personality characteristics and state of health. The centres also have a programme of training, cultural, sporting and recreational activities.

17. When the minor has to undergo treatment in an institution, he will remain for a minimum period of six months and a maximum period of five years in the appropriate centre according to his age and personality characteristics. He will be given comprehensive, progressive, multidisciplinary and individualized treatment.

18. The DGPTM has four different treatment centres: a treatment centre for males, a treatment centre for females, a comprehensive development centre for minors and the Quiroz Cuaron centre for special care.

19. In accordance with the legislation governing these matters, the first multidisciplinary evaluation takes place after the first six months of institutionalization and each quarter thereafter; the results are sent to the unit counsellor, who decides whether to continue, amend or annul the measure adopted.

20. Besides receiving medical, psychological and educational attention, minors follow a programme of academic activities (primary, secondary and open preparatory), as well as special primary education for minors with learning problems, all of which are recognized by the Ministry of Public Education, and undertake training, recreational and sporting activities.

21. In the case of first offenders, when the offence is a minor one, i.e., not intentional or culpable, the law provides for treatment outside the institution. This measure will be from six months to one year in duration and take the form of modular, group or interdisciplinary treatment. The family's participation is sought in order to strengthen family communication and integration. Another form of treatment consists of guidance and protection measures for those young persons who have committed a minor offence, who present no danger to society and who do not repeat their antisocial behaviour.

22. All cases involving comprehensive treatment, both within and outside the institution, include follow-up with the aim of reinforcing and consolidating the progress made, for a period of six months, during which the minor is visited and interviewed by a social worker who has not participated directly in the comprehensive treatment. These interviews are aimed at providing the minor with feedback consisting either of guidance, encouragement or recognition, and exploring four basic aspects: family, school, employment, and environment outside the family.

23. This follow-up programme receives support from various agencies involved in assistance, training and education.

24. Finally, another vitally important aspect that arises with this age group is the diversity of criteria concerning age-limits, whether for purposes of assistance or penal measures. This leads to the inequitable dispensing of assistance or justice and thus to violation of the minor's human rights.

Objective:

25. To provide minors subject to legal procedure and guidance, protection or treatment measures, both within and outside institutions, with the greatest possible number of means to enable them to change their lifestyles and lead worthy and productive lives.

Goals:

26. In compliance with articles 11, 16, 19, 26, 33, 35, 37, 38 and 40 of the Convention on the Rights of the Child relating to illicit transfer and non-return, protection of privacy, protection against ill-treatment, social security, drug use and drug trafficking, sale, trafficking and abduction of children, torture and deprivation of liberty, armed conflicts and administration of juvenile justice, the following priority goals have been set for 1996, in agreement with the competent agencies:

Ministry of the Interior:

To provide all minors for whom the Commissioners assume responsibility with assistance, diagnostic services and treatment;

To provide all minors residing in the various centres with comprehensive treatment;

To provide all minors who have completed treatment within or outside institutions with technical follow-up;

To provide all families of minors subject to treatment measures with guidance and support, through the School Programme for Parents;

To conduct bio-psycho-social studies of all minors subject to procedure;

To provide all minors subject to guidance and protection measures and non-residential treatment with multidisciplinary technical attention;

Fully to update the principle of legality, in order to improve the enforcement of justice for juvenile offenders.

National System for the Integral Development of the Family (DIF):

To promote the standardization of State laws at the national level in order to establish a single age-limit for social assistance to minors;

To cooperate with the Ministry of Foreign Affairs in order to ensure that returnee children are sent back to their places of origin, with the participation of the Office of the Attorney-General and the legal departments of the state DIF agencies. An assessment should be made of

the needs of these children for social services and psychological guidance, bearing in mind that the Ministry's custody of them is temporary;

To encourage the DIF to provide comprehensive care for minors involved in a criminal offence who lack family support and are at complete liberty or on conditional release, and channel them through the appropriate legal bodies;

To encourage the national DIF to provide care and assistance for physically and mentally disabled minors involved in the commission of any criminal offence. In such cases, as in the case above, in the Federal District additional support for homes should be given by the Federal District government, and in the provinces State DIFs should organize support from NGOs through agreements concluded for that purpose.

Strategies:

To establish coordination and cooperation mechanisms with the agencies involved in the administration and enforcement of juvenile justice;

To implement coordination and cooperation mechanisms with the agencies involved in the prevention of antisocial behaviour by minors.

Courses of action:

Incorporate the preliminary investigations transmitted by the Public Prosecutor's Office to the juvenile commissioner;

Issue the corresponding duly substantiated decisions;

Implement treatment measures for minors;

Develop and supervise the proper implementation of rules, guidelines, programmes and regulations instituted in the treatment centres;

Develop and supervise educational, training and vocational activities and special events that take place in the diagnostic and treatment centres;

Develop the individual technical follow-up programme for minors who have completed their non-residential treatment;

Organize the School Programme for Parents with the parents or guardians of minors undergoing non-residential treatment;

Conduct bio-psycho-social and diagnostic studies for all minors subject to procedure, for the purpose of ascertaining the causes of delinquent behaviour;

Organize group, modular and individual psychotherapy programmes for minors subject to guidance, protection and non-residential treatment measures;

Establish links with assistance, health, training, educational, cultural and sports institutions that will provide supplementary support for the implementation of guidance, protection and non-residential treatment measures, and also technical follow-up measures;

Conduct diagnostic studies and provide comprehensive treatment and technical follow-up for minors being treated in the social and family environment or in institutions;

Conduct the investigations needed to determine whether minors have participated in criminal acts;

Represent the legitimate interests of society vis-à-vis the unit counsellors in proceedings against minors suspected of having committed a criminal offence;

Ensure that guidance, protection and treatment measures are fairly applied to minors;

Conduct the appropriate medical examinations with the aim of ascertaining the minor's psychological and physical condition on entry;

Channel minors displaying any signs of pathology to institutions in the health and assistance sectors;

Lodge appeals in respect of both initial and final decisions and assessment decisions;

Respond immediately to persons filing complaints;

Request final decisions for the purpose of preparing legal action to establish the degree of participation and the seriousness of an offence attributed to a minor who is the subject of treatment;

Attend meetings on the comprehensive treatment plan and sessions of the multidisciplinary Technical Council;

Prepare training programmes and register them with the Ministry of Public Education;

Arrange, with the various public and private institutions, the support needed for the holding of recreational, cultural and sporting events;

Supervise the educational, training and vocational programmes and events held in the centres;

Conduct inspections of the social, working and educational environments in which the minor is undergoing non-residential treatment;

Run the modular School Programme for Parents;

Ensure that diagnostic and other studies in the areas of psychology, social work, education and medicine are correctly prepared;

Prepare an individual work plan for minors subject to guidance, protection and treatment measures within and outside institutions by means of the appropriate technical analysis;

Design and implement individual psychotherapeutic or psychiatric treatment for minors subject to non-residential or residential treatment when required;

Promote and coordinate the holding of civic, cultural and recreational events on weekends and holidays.

Follow-up and assessment

27. The Sub-Commission on Juvenile Offenders will establish follow-up review and assessment mechanisms and propose any changes necessary in order to meet objectives.

Training in human rights and juvenile justice

28. The following are the measures recently adopted by the competent departments and institutions in the area of training in human rights and juvenile justice for officials and professionals working in this field.

29. In the framework of the Council for Juvenile Offenders, special care has been taken in the selection and training of staff working in this area of justice at various levels (executive, administrative, technical and legal), and the updating of their special knowledge. The Ministry of the Interior cooperates in this area by training professionals in various social disciplines directly linked to the diagnosis and treatment of minors who come before the courts.

30. It should be noted that article 9, section IV, of the Treatment of Juvenile Offenders Act sets forth as the main requirement for appointment as President of the Council, Counsellor of the higher chamber or unit counsellor, Secretary-General for decisions of the higher chamber, member of the Multidisciplinary Technical Committee, Secretary for decisions and defence counsel, specialized knowledge in the area of juvenile offenders, with the appropriate certification.

31. In the first half of this year, the Council for Juvenile Offenders, in inter-agency coordination with the Human Rights Commission of the Federal District, conducted a human rights training course for Council staff.

32. In the short term, plans are also being made to create a "Certificate of Refresher Training in the field of Juvenile Offenders", coordinated by the National Autonomous University of Mexico, which has been working regularly in the area of the human rights of juvenile offenders. The main objective of this course is to provide refresher training for, and upgrade the quality of, staff responsible for the administration of justice (higher chamber counsellors and unit counsellors, secretaries for decisions, clerks of the court, planners, commissioners, etc.) and lawyers responsible for assisting minors, and to make the legislation governing this area known to professionals in other fields who are interested in the subject.

33. Throughout the year, the Office of the Attorney-General of the Republic has been conducting a programme aimed at disseminating a culture of respect for human rights through training courses for members of the Public Prosecutor's Office and the Judicial Police, including among other subjects the need for knowledge and correct application of the national and international standards that protect the so-called vulnerable groups, which include minors. As part of the programme's first stage, training has been provided for a total of 1,892 staff members of the Office of the Attorney-General, including 550 staff from the Federal Public Prosecutor's Office and 722 Federal Judicial Police officers.

34. For its part, the National Human Rights Commission, jointly with the United Nations Children's Fund (UNICEF) and the Ministry of the Interior organized five regional workshops on juvenile offenders; these were attended by civil servants responsible for defence, administration and implementation functions in the juvenile care system. The following were among the issues covered at the above-mentioned workshops:

(a) Training of all civil servants with responsibilities in the juvenile justice system in the areas of the best interests of the child, the social vulnerability of minors, limited criminal responsibility (in all spheres), presumption of normality (in the areas of procedure and implementation), presumption of innocence and presumption of being under age (in the procedural sphere);

(b) The need to establish a minimum age of 12 and a maximum of 18 for minors in criminal matters throughout the national territory;

(c) Arguments in favour of establishing special authorities for minors, particularly in the area of law enforcement.

35. It should also be noted that, in order fully to incorporate the juvenile justice criteria contained in the international instruments referred to in resolution 1995/41, the National Human Rights Commission has prepared a working paper entitled "Legislative criteria for the protection of the human rights of juvenile offenders".

Norway

[6 December 1995]
[Original: English]

1. In Norway, the age of criminal responsibility is 15 years. This means that no person under this age can be punished for criminal acts they have committed. Normally, offenders under this age will be taken care of by the Child Welfare Office. However, attempts are made to avoid punishing juveniles just above the age of criminal responsibility. This applies especially to imprisonment.

2. In the Norwegian legal system, the prevailing theory is that juveniles shall not be sentenced to imprisonment if they are under 18 years old. This

is also reflected in the Criminal Procedure Act, in which article 174 states: "Persons under 18 years of age should not be arrested unless it is especially necessary".

3. This is also reflected in the Prosecution Instructions, articles 9-2 and 9-3. These articles state, inter alia, that as an alternative to incarceration of persons under 16 years of age, one should attempt to place the juvenile in an institution run by the Child Welfare Office. If the person is under 18 years of age, one should notify the Office.

4. However, sometimes the crimes committed leave the authorities no alternative other than imprisonment. There are today six juveniles in Norwegian prisons. One is serving a custodial sentence for homicide, another for bodily harm, while four are serving sentences for theft.

5. The Norwegian Prison Act article 14, states: "The inmates shall be treated firmly and seriously and in such a way as to promote their chances of adapting to society. Harmful effects of the loss of freedom shall as far as possible be prevented or counteracted". The Ministry of Justice has emphasized that this especially applies to young offenders. This is also reflected in the Prison Rules, issued by the Central Prison Board pursuant to the Prison Act. The Prison Rules contain, inter alia, guidelines stating that young offenders shall at an early date be considered for transfer to an open institution. Article 52.2 orders the institution to seek cooperation with the social system outside the penal institution to give the juvenile the best possible care. This includes a rule that the juvenile shall be examined by a medical doctor as soon as possible, and within one week at the latest.

6. When a juvenile is incarcerated, he or she will be given special attention, from both prison staff and medical/psychological staff. He or she will also be encouraged to start hobbies or to continue his or her education. In Norway the teaching staff come from ordinary schools and the inmates have the same opportunity to graduate as students outside the institution. If it is considered safe, the juvenile can attend classes in ordinary schools.

7. The Norwegian Prison Service also operates different institutions specially designed for young offenders, even if older inmates are offered spare places. These institutions offer a wide range of educational alternatives, including high school diplomas and other more practically oriented lines. The Prison Service also has a special institution for young offenders wit drug problems.

Spain

[15 December 1995]
[Original: Spanish]

1. Spain has ratified the United Nations Convention on the Rights of the Child and, pursuant to article 40 of the Convention, has enacted Organization Act No. 4/1992 of 5 June 1992. In preparing the text, account was taken of the Beijing Rules and Riyadh Guidelines, as well as other international instruments.

2. In the Spanish Government's report to the Committee on the Rights of the Child, all aspects of the rights of the child, and specifically juvenile offenders, have been fully covered.

3. The above-mentioned Organization Act contains a series of measures applicable to minors who have infringed the criminal laws; institutionalization is used as a last resort and great emphasis is placed on mediation and reconciliation as means of avoiding legal proceedings.

4. For years the Administration has been providing training courses for various professionals working with minors: judges, police officers and civil service technical staff.

Tunisia

[8 December 1995]
[Original: French]

1. Tunisian law grants children in conflict with the law the right to special treatment as regards both the administration of justice and penalties imposed.

Administration of justice

2. The Tunisian legislature has endeavoured to provide juvenile offenders with a special status and a system of justice adapted to their situation, by including the following measures in the Code of Criminal Procedure:

Juvenile courts: children over 13 and under 18 years of age are tried by a juvenile court judge rather than in the ordinary courts;

The juvenile court judge is required to open a social and psychological inquiry procedure for the purpose of gathering information on the material and moral situation of the minor's family, the minor's character and background, his school record, his attitude towards school and the conditions in which he has been living or has been raised. If necessary, the judge will order a medical-psychological examination of the minor. He may decide to place the minor in an observation centre if appropriate; a report on the psychological, medical and sociological aspects of the minor's personality is submitted to the judge by the centre's specialists;

Guarantee of the right to defence and the child's participation in the hearing: the code of Criminal Procedure stipulates that the juvenile court judge shall reach a decision after hearing the child, the parents, the guardian, the victim, the witnesses, the Public Prosecutor's Office and the defence counsel, after consultations with two advisers specializing in juvenile affairs. The judge may exempt the minor from appearing at the hearing if this is in the minor's interest. In such cases, the minor is represented by a lawyer, his father, mother or guardian, or the person who has custody of him;

Non-public nature of the hearing: the only people admitted to the hearing are the witnesses in the case, close relatives, the guardian, the minor's legal representative or the person who has custody of him, the lawyers and the parole officers.

Penalties imposed on minors

3. It should be emphasized that the Tunisian Penal Code states that an offence is not punishable when the accused was under 13 years of age at the time the offence was committed. The Code also states that any child over 13 and under 18 years of age who has committed an offence may not be sentenced to death or life imprisonment. A prison term may, however, exceptionally be imposed on a minor over 13 years of age when circumstances and his personality so require.

4. However, a prison term may never be imposed on a young person over 13 years of age for a minor offence. In such cases the judge may either give the minor a warning, sentence him to a fine as stipulated by law, or place him on probation if appropriate.

Treatment of children deprived of their liberty

5. Only very rarely will a judge order a measure depriving a minor of his liberty. When such a measure has been ordered, the minor is placed in one of the establishments known as "Centres for observation and educational action", which are comparable to first-cycle technical schools. Minors are placed there either for observation or for an education action measure. Very few are placed for a criminal measure.

6. The observation stage is an important one in that it supplements the analysis of the minor's family and social situation. A report prepared by the director of the centre is sent to the juvenile court judge together with a proposal for the most advisable arrangement for the minor: return to the parents, probation, placement in an educational action centre or elsewhere.

7. The goal of educational action is to provide young people with a healthy and normal life experience. There are various components to such action, such as socio-cultural activities, physical and sporting activities, tuition and vocational training. Minors are guided towards the proposed training areas in the light of their school level, ability, motivation and aspirations. Successful completion entitles the young person to receive a vocational training certificate equivalent to those issued by the training centres subordinate to the Ministry of Employment and Vocational Training.

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